

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

RODERICK HOWARD,
Plaintiff,

Case No. 1:10-cv-547
Dlott, J.
Litkovitz, M.J.

vs.

COMMISSIONER OF
SOCIAL SECURITY,
Defendant.

ORDER

This matter is before the Court on plaintiff's motion for attorney fees under the Social Security Act, 42 U.S.C. § 406(b)(1)(A) (Doc. 24) and the Commissioner's response thereto (Doc. 25). Plaintiff seeks an award of attorney fees in the amount of \$45,883.98 for work done before this Court as provided for under the Act.

As explained by the Commissioner, plaintiff's motion for fees is premature as the Social Security Payment Center initially erred in the withholding of back benefits from plaintiff's award for purposes of an award of attorney fees under the Act. Plaintiff was awarded \$183,535.90 in past-due benefits. However, instead of withholding 25% of the past-due benefits for a potential attorney fee award, the Social Security Administration withheld only \$6,000.00 from the past-due benefits. The Commissioner represents that the Social Security Payment Center has been made aware of the error and is recalculating the withholding of past-due benefits for purposes of an attorney fee award. (Doc. 25 at 3).

In addition, plaintiff has failed to submit a time-sheet or time records showing the breakdown of the hours expended in this matter. As such, the Court is unable to determine if counsel's claimed 65 hours is a reasonable amount of time to spend on this case.

Finally, counsel has not demonstrated that the fee he is seeking is the Social Security

standard rate for such work in the relevant market. *See Hayes v. Secretary of Health & Human Servs.*, 923 F.2d 418, 422 (6th Cir. 1990).

It is therefore **ORDERED** that plaintiff's motion for fees be **DENIED WITHOUT PREJUDICE**, subject to the filing of an amended motion for fees within thirty (30) days of the issuance by the Social Security Administration of a revised award notice setting forth the amount of past due benefits set aside for the payment of attorney fees. Plaintiff's amended petition must address the deficiencies noted in this Order.

IT IS SO ORDERED.

Date: 5/7/13


Karen L. Litkovitz
United States Magistrate Judge